

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.24230 of 2018

ORDER:

This Writ Petition is filed seeking writ of mandamus declaring the action of the 1st respondent in issuing impugned order vide Hyd/30/Pol/PCC/238/2017, dated 05.07.2018 directing the petitioner to surrender his passport No.K6424632, within a period of 7 days as illegal and arbitrary and in violation of Sections 6 and 10(5) of the Indian Passports Act, 1967 (for short 'the Act of 1967').

2. Brief facts which are necessary for disposal of the Writ Petition are as follows:

It is the case of the petitioner that his younger brother Venkatesh has filed a false criminal complaint against him and his elder brother on 17.11.2011 before the XI A.C.M.M, Secunderabad alleging fraud and misappropriation of their family business funds after lapse of 7 years of closure of their business. The Police Mahankali, Secunderabad registered a case in Crime No.212 of 2012 for the offence under Sections 467, 406, 420, 465, 477-A, 201, 109, 120-B and the police having investigated into the matter, closed the case due to lack of evidence on 30.04.2014. That the police in collusion with the complainant filed a supplementary charge sheet on 13.03.2015 in CC No.871 of 2014 before the XI A.C.M.M., Secunderabad with false and frivolous findings accusing him and his elder brother. Aggrieved by the same, he obtained Anticipatory Bail in Crl.P.No.8166 of 2012, dated 27.11.2012 from this Court and his elder brother filed quash petition before this Court and obtained stay of all further proceedings in CC No.871 of 2014 before the XI

ACMM, Secunderabad and same is pending. Though the petitioner filed discharge petition, the same is pending before the Court below due to stay of all further proceedings obtained by his brother; that all his three sons settled in USA and that himself along with his wife visited USA in 2007 and Germany in 2011; that he had several movable and immovable properties in his name and that he is an income tax assessee since 30 years; that the petitioner received show-cause notice dated 28.11.2017 from the 1st respondent calling him to explain as to why action should not be initiated against him under Section 10 (3) (e) of the Act of 1967. Though the petitioner submitted explanation on 06.12.2017, the same is not considered in proper perspective and issued order dated 14.12.2017 directing him to surrender his passport No.L7868107, which is incorrect number, within a period of 15 days from the date of receipt of the impugned notice. Aggrieved by the same, petitioner preferred W.P.No.5586 of 2018 and the same is disposed of setting aside the proceedings by order dated 09.03.2018. Basing on the orders in the aforesaid writ petition, the 1st respondent again issued show-cause notice dated 06.06.2018 under Section 10(3)(e) of the Act of 1967 and the petitioner submitted explanation on 13.06.2018. That once again the 1st respondent issued another show-cause notice dated 21.06.2018, to which the petitioner also submitted explanation on 29.06.2018. Thereafter, the 1st respondent, without considering the explanation of the petitioner in proper perspective, issued impugned proceedings impounding passport vide proceedings dated 05.07.2018, which is received by the petitioner on 09.07.2018; that the petitioner is not having any intention to flee from India and

thereby unavailable and escape the jurisdiction and that he is ready to cooperate in the pending case i.e., CC No.871 of 2014 before the XI A.C.M.M, Secunderabad; that the petitioner was not given any opportunity and that he has not at all involved in any criminal cases.

3. Counter affidavit is filed by the respondents admitting some of the averments in the affidavit filed in support of the Writ Petition and denied some averments stating that they received complaint dated 17.11.2017 from one Varaganti Venkateshwara Rao against the petitioner stating that petitioner is facing criminal proceedings before the XI Addl. Chief Metropolitan Magistrate in CC No.871/2014; that as criminal case is pending against him, they issued letter dated 14.12.2017 directing the petitioner to surrender his passport bearing No.L7868107 within 15 days from the date of receipt of the notice; that when passport number of the petitioner is wrongly mentioned inadvertently, they issued rectification letter dated 02.01.2018 to surrender the passport bearing No.K6424632 issued to the petitioner. Aggrieved by the same, the petitioner filed WP No.47001 of 2017 challenging the letter dated 14.12.2017 and on 03.01.2018, this Court has set aside the said letter and granted liberty to this respondent to issue notice to the petitioner, afford an opportunity and communicate orders as are necessary; that this respondent issued another letter dated 07.02.2017 directing the petitioner to surrender his passport within 15 days, failing which, action would be initiated under Section 10(3)(e) of the Act of 1967. It is also stated that this respondent would have no objection to repeal the direction if the petitioner produces a certified copy from the

Hon'ble XI A.C.M.M, Secunderabad permitting him to depart from India as per the gazette notification vide GSR No.570(E). It is stated that the petitioner again filed WP No.5586 of 2018 challenging the order dated 07.02.2018, which was allowed by this Court on 09.03.2018 by setting aside the orders passed by this respondent vide letter dated 07.02.2018, permitting this respondent to issue fresh show-cause notice to the petitioner so as to enable him to file explanation and to pass appropriate order strictly in accordance with law. As per the directions of this Court, this respondent issued show-cause notice dated 23.04.2018, directing the petitioner to furnish explanation regarding criminal proceedings pending against him. But the petitioner has not submitted explanation, as such, this respondent again issued reminder show-cause notice dated 06.06.2018, to which the petitioner submitted explanation. Since criminal case is pending against the petitioner, this respondent initiated proceedings impounding his passport and intimated to him vide letter dated 20.06.2018 and also requested him to surrender his passport within seven days and also to obtain permission to travel abroad from the same court where the case is still pending, as per the Ministry of External Affairs, Gazette Notification vide GSR 570(E). It is stated that the action of the respondent is in accordance with Section 10(3)(e) of the Act of 1967 and that they have not violated any right of the citizen guaranteed under Constitution of India and sought for dismissal of the writ petition.

4. Heard Sri P.Radha Krishna, learned counsel for the petitioner and Smt. S.Siva Kumari, learned Standing Counsel for the 1st respondent.

5. Learned counsel for the petitioner submits that the impugned order of the 1st respondent is *ex facie* illegal and arbitrary and no proper reasons are assigned in the impugned order as envisaged under Section 10(5) of the Act of 1967, for passing an order. He submits that since the impounding of passport entails civil consequences, the authorities are duty bound to give opportunity of hearing to the petitioner. He also submits that discretion is vested in the 1st respondent whether to impound the passport or not and it is not at all mandatory to impound the passport or revoke a passport or travel document, if proceedings in respect of offence merely alleged to have been committed by the holder of the passport or travel document are pending before the Court in India. He submits that without considering the explanation offered by petitioner, impugned order is passed, without any application of mind, in a routine and casual manner. He submits that because of non application of mind on the part of the 1st respondent, the petitioner has to file two writ petitions. He submits that 1st show-cause notice was issued on the ground of suppression of fact that he has obtained passport while pendency of criminal case, but in fact, criminal case is registered after obtaining passport in the year 2012. In support of his contention, he relied on the judgment reported in **Mohd.Farid v. Union of India and another**¹.

6. On the other hand, learned Standing Counsel for the 1st respondent submits that as per Section 10 (3) (e) of the Act of 1967, mere pendency of criminal case is sufficient for impounding the passport and that petitioner was also informed that he can obtain

¹ 2016 LasSuit (AII)3752

permission from the criminal court concerned in terms of gazette notification GSR 570(E) for grant of passport. She submits that instead of obtaining such permission, petitioner refused to surrender his passport. She submits that since criminal case is registered against him, the 1st respondent has no other go except to impound the passport of the petitioner.

7. In this case, it is to be seen that when the first show-cause notice was issued on 28.11.2017, petitioner submitted explanation on 06.12.2017. Having not satisfied with the explanation of the petitioner, the 1st respondent issued another show-cause notice dated 14.12.2017. Aggrieved by the same, petitioner filed W.P.No.5586 of 2018, which is allowed by the order dated 09.03.2018, setting aside the aforesaid impugned order dated 14.12.2017, however it was left open for the 1st respondent to issue show-cause notice to the petitioner so as to enable him to file explanation to the same. In pursuant to the said order of this Court, the 1st respondent issued show-cause notice dated 20.06.2018, to which petitioner submitted explanation on 29.06.2018. Having not satisfied with the explanation of the petitioner, the impugned proceedings dated 05.07.2018 was issued to the petitioner intimating him about impounding of his passport bearing No.K6424632, dated 26.09.2012 under Section 10(3)(e) of the Act of 1967.

8. Before considering the rival contentions of both parties, it is necessary to examine the relevant provision i.e., Section 10 of the Act of 1967. Section 10 of the Act of 1967 confers power on the

Passport Authority to pass orders for impounding/revocation of passports and travel documents. Sections 10 (a) to (h) of the Act of 1967, provides grounds under which impounding/revocation can be done and that Section 10 (5) of the Act requires the Passport Authority to give reasons for making such an order. For the sake of convenience, Sub-Sections 3, 5 and clause (e) of Sub-Section (3) of Section 10 of the Act, reads as follows:

"(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document:-

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India

(5) Where the passport authority makes an order varying or cancelling the endorsement on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy."

The aforesaid provision makes it clear that the Passport Authority under the [Passports Act](#), 1967 has been conferred with the Authority to impound or caused to be impounded/revoked a passport or travel document if proceedings in respect of an offence have been committed by the holder of the passport or travel document are pending before a criminal Court in India. Sub-section 5 of Section 10 obligates the Passport Authority to record in writing a brief statement of reasons for making such an order.

9. A perusal of impugned order dated 05.07.2018 goes to show that basing on the criminal case pending against the petitioner in

CC No. 871 of 2014 on the file of XI ACMM, Secunderabad, the passport of the petitioner was impounded and asked to surrender the same. In fact, petitioner has filed explanation giving circumstances leading to criminal cases, but the said aspect has not been considered by the 1st respondent and that without application of mind, impugned proceedings have been passed. It is pertinent to note that in the impugned order at paragraph 3, it is stated as follows:

“3. However this office can consider your case if you obtain permission to travel abroad from the same court where the case is still pending. In this regard the Ministry of External Affairs Gazette Notification vide GSR 570(E), dated 25.08.1993 is enclosed herewith for information.”

A fair reading of the aforesaid paragraph clearly states that the 1st respondent is not opposing the petitioner to travel abroad. What all 1st respondent is asking to get permission from the concerned Criminal Court, where CC No.871 of 2014 is pending against to travel abroad, as envisaged under Gazette Notification vide GSR 570 (E) issued by Ministry of External Affairs. Except stating that criminal case is pending, there is no other reason offered by the 1st respondent in impounding the passport of the petitioner.

10. In **Mohd.Farid v. Union of India and another (supra)**, High Court of Allahabad, while dealing with similar situation, held as follows:

“11. A bare perusal of the provisions quoted above would go to show that the Passport Authority under the [Passports Act](#), 1967 has been conferred with the Authority to impound or caused to be impounded/revoked a passport or travel document if proceedings in respect of an offence have been committed by the holder of the passport or travel document are pending before a criminal Court in India. Sub-section 5 of Section 10 obligates the Passport Authority to record in writing a brief statement of reasons for making such an order.

12. Apex Court in the case of [Menaka Gandhi vs. Union of India](#) 1978 (1) SCC 248 has taken the view that sub-section 5 of Section 10 of the

[Passports Act](#), 1967 requires the Passport Authority impounding the passport to record reasons of making such order and the necessity of giving reasons has obviously been introduced in the sub-section so that it may act as a healthy check against abuse or misuse of power. If the reasons given are not relevant and there is no nexus between reasons and the ground on which the passport was impounded, it would be open to the holder of the passport to challenge the order of impounding in a Court of law and if the Court is satisfied that the reasons are extraneous or irrelevant, the Court would struck down the order.

13. Apex Court in the case of [Suresh Nanda vs. CBI](#) 2008 (3) SCC 674 has taken the view that impounding of passport entails civil consequences and in view of this, the Authorities are duty bound to give opportunity of hearing to the person concerned.

14. There is no doubt on this fact that discretion is vested with the Passport Authority in terms of [section 10](#) of the Passports Act, 1967 but it is not at all mandatory on the passport authority to impound or caused to be impounded or revoke a passport or travel document if proceedings in respect of offence merely alleged to have been committed by the holder of the passport or travel document are pending before the Court in India.

15. Pendency of criminal case against the holder of passport would not automatically result in impounding of his passport and the mere fact that certain conditions specified in Section 10(3) of the Act, on the basis of which, a passport can be impounded, subsists in a given case cannot by itself result in impounding of passport automatically and once the Passport Authority, in his wisdom, chooses to exercise his discretion in the said direction as to whether on account of pendency of such criminal case, the passport in question should be impounded or not, then, at the said point of time, the Passport Officer should apply his mind looking into the nature of the criminal cases that have been lodged/initiated against the petitioner and further that if a passport is not impounded, then there are possibilities that the incumbent would not at all face the criminal cases. Even if criminal case is pending against a person that by itself does not require passport authority to impound/revoke the passport in every given case. It is only in appropriate cases for adequate and cogent reasons such an order could be passed. While passing order of impounding/revocation of passport, merely by quoting the requirement mentioned in the section is clearly indicative of circumstance that order has been passed without there being any objective consideration of the subject matter.”

11. In **Kolasani Rajya Lakshmi v. Regional Passport Officer and others**², learned Single Judge of this Court considering similar issue, held as follows:

“This Court had an occasion to deal with a similar contention in *D.Surendernath Reddy vs. The Regional Passport Officer, Secunderabad and others* [1], W.P.No.524 of 2012, dated 27.06.2012, wherein, while rejecting the submission advanced on behalf of the petitioner therein, it was held as under:

² 2013 (2) ALT 527

“It is not mandatory for the passport officer to impound the passport of every accused involved in every criminal case. The provisions of sub-Section 3 of Section 10 of the Act vested fair amount of discretion in the passport authority whether to impound or not to impound the passport depending upon the gravity of the offences with which the accused is charged. Under Clause (d) of Section 10 (3) of the Act, even in cases of conviction, the passport of every convict is not liable to be impounded unless such conviction was made for any offence involving moral turpitude and the convict was sentenced in respect of imprisonment for not less than two years. Such being the case, the submission of the learned Counsel for the petitioner that mere pendency of a criminal case is sufficient for impounding the passport, cannot be accepted.

Sub-Section (5) of Section 10 of the Act of 1967 makes it mandatory on the part of Passport Authority to record reasons for passing order for impounding the passport of a person. But in the present case, the Passport officer has issued impugned proceedings, after issuing notices three times, without properly considering the explanation offered by the petitioner. In this connection, it is relevant to extract clause (d) of Sub-Section (3) of Section 10 of the Act, which reads as follows:

“10(3) (a)...
(b)...
(c)...
(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

A reading of Section 10(3) of the Act goes to show that even in cases of conviction, the passport authority is not obligated to impound unless such conviction was made for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years. A perusal of the impugned proceedings dated 05.07.2018 also goes to show that the same has been passed without affording an opportunity of hearing to the petitioner.

12. In **Menaka Gandhi v. Union of India**³, the Hon'ble Apex Court has taken a view that sub-section 5 of Section 10 of the Passports Act, 1967 requires the Passport Authority impounding the passport to record reasons of making such order and the necessity of giving reasons has obviously been introduced in the sub-section so that it may act as a healthy check against abuse or misuse of power. It is also held that if reasons given are not relevant and there is no nexus between reasons and the ground on which the passport was impounded, it would be open to the holder of the passport to challenge the order of impounding in a Court of law and if the court is satisfied that the reasons are extraneous or irrelevant, the Court would struck down the order. An interpretation placed by Allahabad High Court in **Mohd.Farid v. Union of India and another (supra)** while referring the judgment reported in **Menaka Gandhi v. Union of India (supra)** case goes to show that the 1st respondent should also record brief reasons. *Prima facie*, as per Section 10(5) of the Act, reasons have to be recorded by the Passport Authority for impounding/revocation of passport of an accused, who involved in a criminal case, but in the present case, basing only on the criminal case being pending against petitioner, passport has been impounded, without recording reasons as envisaged.

In the absence of opportunity of hearing, the impugned proceeding passed by the 1st respondent is liable to be set aside for violation of principles of natural justice. That apart, it is pertinent to note that the petitioner was issued notices for the third time, with the same ground that criminal case is pending against the petitioner

³ 1978 1 SCC 248

and petitioner submitted detailed explanation for the same. Instead of considering the explanation and pass orders under Section 10 (5) of the Act, impugned proceedings have been issued, which is highly illegal and arbitrary and cannot be sustained in the eye of law and is in violation of principles of natural justice and also orders passed by this Court in W.P.No.4500 of 2017 and W.P.No.5586 of 2018.

In the light of above facts and circumstances, this Writ Petition is allowed, setting aside the order passed by the 1st respondent vide proceedings Rc.No. Hyd/30/POL/PCC/238/2017, dated 05.07.2018 and the 1st respondent is directed to consider the explanation of the petitioner, after affording an opportunity of hearing and pass appropriate orders, in accordance with law. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

17-08-2018
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A.RAJASHEKER REDDY,J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.24230 of 2018



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